

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JESSICA SCULLY, et al.,

Plaintiffs,

v.

C-1-01-417

HARTFORD CASUALTY  
INSURANCE CO., et al.,

Defendants.

**ORDER**

Defendant Hartford Casualty Co. (Hartford) filed a motion for summary judgment in this action (doc. 46) and defendant United Educators Insurance Risk Retention Group, Inc. (United Educators) filed a motion to stay action pending arbitration (doc. 4). Plaintiffs have responded only to the motion to stay. Defendants have both filed Notices of Supplemental Authority (docs. 48, 49) in which they bring to the Court's attention the Ohio Supreme Court's recent decision in *Westfield v. Galatis*, 100 Ohio St.3d 216, 797 N.E.2d 1256 (2003), which limited *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.*, 85 Ohio St.3d 660, 710 N.E.2d 1116 (1999) to employees injured within the scope and course of employment. Defendant United Educators argues for the first time in its reply brief submitted with its supplemental authority that because plaintiffs' claims are now foreclosed under Ohio law as well as under New York law, the Court should dismiss plaintiffs' complaint with prejudice. Defendant Hartford has raised the new argument that under Ohio law as set forth in *Westfield*, plaintiffs are not entitled to any benefits under the commercial

insurance contract issued by Hartford to plaintiff Jessica Scully's employer and Hartford is therefore entitled to summary judgment on this additional ground.

Plaintiffs should have an opportunity to address the new issues which defendants have raised in the reply brief and Notices of Supplemental Authority before the Court rules on defendants' pending motions. Accordingly, plaintiffs are granted **30 days** from the date of this Order to respond to defendants' newly-raised arguments and to address the specific issue of what impact, if any, the *Westfield* decision has on plaintiffs' claims against all defendants.

**IT IS SO ORDERED.**

S/ Herman J. Weber

HERMAN J. WEBER  
SENIOR JUDGE, UNITED STATES DISTRICT COURT

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